

OFFICE OF SPECIAL MASTERS

No. 04-554V

Filed: February 27, 2007

NOT TO BE PUBLISHED

BRILANT SHERIFI AND LULYETE SHERIFI, *
on behalf of their daughter, BELGUSA SHERIFI, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

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Reye's Syndrome; parents
testimony fails to comport with
contemporaneous medical
records; opposing testimony
from fact witnesses
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FACT RULING¹

GOLKIEWICZ, Chief Special Master.

This case presents factual issues which require resolution prior to seeking expert opinions on whether the vaccinations caused any of the alleged injuries. In order to resolve the factual issues, two fact hearings were held: the first involved the testimony of the parents, Lulyete and Brilant Sherifi; the second presented, at the undersigned's request, the testimony of the nurses and doctor from the clinic that administered the vaccines in question and a treating doctor, Dr. Glasser. Dr. Glasser also provided an opinion letter in the case.

In summary, the lack of notations in the medical records, as confirmed by the fact testimony of the nurses and doctor from the clinic, establish that the extreme reaction testified to by the parents did not occur as they represented. The Sherifis are clearly passionate about their child. Also, there are significant language barriers involved. However, taking all factors into

¹The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

account, and having observed and judged the fact witnesses in person (except for Dr. Glasser who testified by telephone), the undersigned simply cannot credit the Sherifis' testimony of an extreme reaction - which amounted to a true medical emergency.²

As the undersigned stated to counsel off-the-record, there is little doubt that Belgusa reacted to her vaccination, but that reaction was at most the typical crying and fussiness that can follow vaccinations. Considering the totality of the record, the Sherifis have elevated that typical reaction to a level that can only be described as a medical emergency. There simply is no reliable indicator in the record that Belgusa suffered such a reaction. The undersigned will discuss briefly the underpinnings for the above summary of fact findings.

Belgusa was born on March 28, 2000. Petition at 1. There is no indication of meaningful medical problems before the vaccination date in question, April 11, 2001. She was given a number of vaccines that day. See Petitioner's Medical Records (P. Med. Rx. at 9, 13.) Immediately following the immunizations, according to the parents, Belgusa began reacting. Belgusa's mother, Lulyete, described the reaction this way:

my daughter started jumping on the bed and screaming and yelling. She got all red, red, she got really red, her whole face and all her body, and she was foaming at the mouth, and she was jumping up and down. And she had a complication with breathing. . . . Why does she have these red marks on her chest and why is my child doing this? And [the nurse] saw it, and she said that's an allergy. No, she said this is a rash, not an allergy. . . . But the child kept on moving and shaking in a very severe way. The foam, the complications with the breathing, and then she reached a state where was sleeping. But it's not sleeping. I don't know how to say in Albanian, but it seemed like she was unconscious; that her muscles weren't working. She was just completely relaxed, and she saw that and [the nurse] saw that and she didn't say anything.

Transcript of July 14, 2005 Hearing (Tr. 1 at __) at 12-13.

Belgusa's father, Brilant, described the reaction this way:

she was shaking her body uncontrollably, and she had all red spots all over her body, and she had foam at the mouth. She was crying and screaming. She was crying and screaming, and there was foam at the mouth, and her throat was swollen. Her neck was swollen and she was crying. She was crying and

²In weighing the clinic staffs' testimony, the undersigned is cognizant of what could be described as self-serving testimony given the Sherifis' lawsuit against the clinic. However, the undersigned weighed the staffs' testimony with the contemporaneous medical records, and saw no indications that their testimony was colored in any way by the desire to protect themselves from any liability.

screaming. And my wife came and she asked, she said ask this woman why our child looks so bad. Why is she all red all over her body? And [the nurse] said because it looks like she has allergies. And [the nurse] started laughing and she said - she said that's not called an allergy. She said that's called a rash.

Id. at 45-46.

The medical records, although sparse, do not substantiate the parents' testimony. There is no record of any reaction to the vaccinations on April 11, 2001, and the record of her visit to the clinic three months following the shots records no problems or complaints from the parents. See Med. Rx. at 14. Considering the parents' language and cultural barriers and quite frankly given their exhibited passion during their testimony, the undersigned requested that the clinics' workers testify. That testimony was taken on November 28, 2006. See Transcript of November 28, 2006 Hearing (Tr. 2 at ____). The clinic witnesses were very credible and convinced the undersigned beyond any doubt that the parents' testimony could not be relied upon.

Dr. Dahodwala testified that she saw Belgusa on April 11, and everything was normal. Tr. 2 at 12. She did not observe the vaccinations, but stated that she would have been called if there was any reaction. Id. at 13. However, that is a supposition because in her 11 years there has never been a reaction. Id. But she reiterated that in the case of an extreme reaction such as anaphylaxis she would be notified, 911 would be called and the patient would be transferred. Id. at 14. She saw Belgusa on July 11, performed the physical, observed her for developmental and physical abnormalities, and seeing none, noted no problems in the records. Id. at 15. Dr. Dahodwala was read the father's Hearing testimony describing the alleged reaction and was asked if anything like what was described in the father's testimony happened on April 11. Dr. Dahodwala responded "no", and said that she would have been called if anything like that occurred and further medical attention would have been sought. Tr. 2 at 33-34, 37.

Nurse Hendricks testified next. She administered the immunizations. Tr. 2 at 45. She was read the father's Hearing testimony and was asked if what was described in the father's testimony had happened. She responded "no." Id. at 47. Ms. Hendricks explained that anything other than crying would be abnormal and, if anything abnormal occurred, that she would have called Dr. Dahodwala and have the office call an ambulance. Id. at 47-48. Ms. Hendricks also did the nursing assessment on July 11, three months following the vaccination. The medical record indicates that there were no recent illnesses. P. Med. Rx. at 14. She stated that that information came from the parents. Tr. 2 at 49. Also, if there had been a rash, that would have been noted. Id.; see also Id. at 51. And finally, Ms. Hendricks discussed an unrelated test that provided a critical opportunity for the parents to voice any concerns about a reaction to the vaccination. As part of the visit on April 11, Belgusa received a PPD test for tuberculosis. The PPD is injected in the skin and, as a follow-up to the injection, a reaction to the injection is looked for. Tr. 2 at 75. The reaction should occur in 24-48 hours. Id. at 76. To determine if there is a reaction, there is always staff follow-up. Id. at 75. The medical records indicated that

the test was “negative.” P. Med. Rx. at 15. Ms. Hendricks explained that someone from the clinic spoke to the Sherifis within 24-48 hours following the PPD test, which was also 24-48 hours following the vaccinations. Id. at 76-77. Thus, if Belgusa was suffering the severe reaction the parents allege, when the clinic contacted them about the PPD test the Sherifis had the opportunity to relate their concerns about the immunization reaction. Stated another way, when contacted 24-48 hours following the immunization, the Sherifis related the negative reaction to the PPD, but did not relate any concerns about a reaction to the immunizations. Ms. Hendricks’ testimony was very credible and was devastating to the Sherifis’ factual allegations.

Janet Bishop testified next. Her testimony added little to the factual portion of the case.

Dr. Barry Glasser testified last. Dr. Glasser saw Belgusa several years after the immunization, on June 16, 2003. Tr. 2 at 95. Dr. Glasser had provided a letter filed in this case in which he stated that Belgusa “suffers from having been over immunized with Hepatitis B. . .” P. Med. Rx. at 2. This letter gives the impression that Dr. Glasser supports a causal relationship between Belgusa’s current problems and her immunizations. However, Dr. Glasser’s testimony was far less supportive. Dr. Glasser testified that the above statement was what “the family was telling [him].” Tr. 2 at 96. He stated that he examined the child and she seemed fussy, but stated “I’m not a pediatrician.” Id. at 98. He saw no rash, but did see scratching. Id. When asked about bad behavior, he testified that the child seemed irritable, but once again cautioned that “I’m not a pediatrician.” Id. at 99. He stated that he spent the “bulk of my energies [] trying to get the family to see a pediatrician because I felt uncomfortable treating a child.” Id. at 100. He forthrightly conceded that this case is outside of his expertise. Id. at 102. Importantly, however, Dr. Glasser’s medical notes, as confirmed by his testimony, indicated that he saw nothing wrong with Belgusa at the June 16, 2003 visit. Tr. 2 at 103-105. In fact, he did a physical, and with the exception of congestion, found nothing wrong. Id. at 107.

In conclusion, the Sherifis passionately describe an immediate and extremely severe reaction by Belgusa to her April 11, 2001 immunizations. However, the medical records contain no indication of any reaction or resultant harm. The medical records contain indicators casting doubt on the family’s allegation. The contact by the clinic for the results of the PPD test provided the perfect opportunity for the parents to relate their concerns. However, other than the “negative” result to the PPD test, there is no indication of any other problems. Belgusa was seen in July of 2001. A physical assessment was done. No problems were found. There is no note of parental concerns, despite the testimony that the parents are asked about concerns. Even Dr. Glasser testified that he saw no support for the father’s continuing complaints about the vaccinations two years after immunization. The witness testimony described the clinic, the physical layout, the standard course of treatment and care. Each piece of information casts considerable doubt on, in fact making it nearly impossible to credit, the parents’ testimony. As stated in the summary above, the undersigned believes that Belgusa suffered some form of typical reaction - crying, fussiness, irritability - that scared the parents. However, based upon the

entirety of the record to date, the undersigned rejects completely the parents' testimony, see Tr. 1 at 12-13, 45-46, of wild screaming, foaming at the mouth and immediate redness.

Based upon this factual ruling, petitioners have a very difficult case to make. Petitioners have indicated to the undersigned that they have a medical expert prepared to review this matter. The medical expert must read this factual ruling, and should read the transcripts of the Hearings, paying particular attention to the transcript of the November 28, 2006 Hearing. Any expert opinion based upon the factual allegations of the parents alone, will be rejected.

Petitioners shall file their expert report by no later than April 27, 2007. If petitioners are unable to file their report by that date, petitioners shall schedule a status conference to discuss the reasons for the inability to file the expert report. If there are any questions about this Order, the parties may contact my staff attorney, Jocelyn McIntosh, at (202) 357-6344.

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master